

Tribal Rights and Interests in Salish Sea Oil Spill Response



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Purpose Statement

- The purpose of this presentation is to summarize:
 - Treaty **Rights** of Northwestern Washington Tribal Governments;
 - Tribal **Interests** Related to Oil Spill Response – Lummi Nation Example;
 - Staff Responsibilities, Response Capabilities, and Expected Roles within Response – Lummi Nation Example.



Treaty Rights of Northwestern Washington Tribal Governments



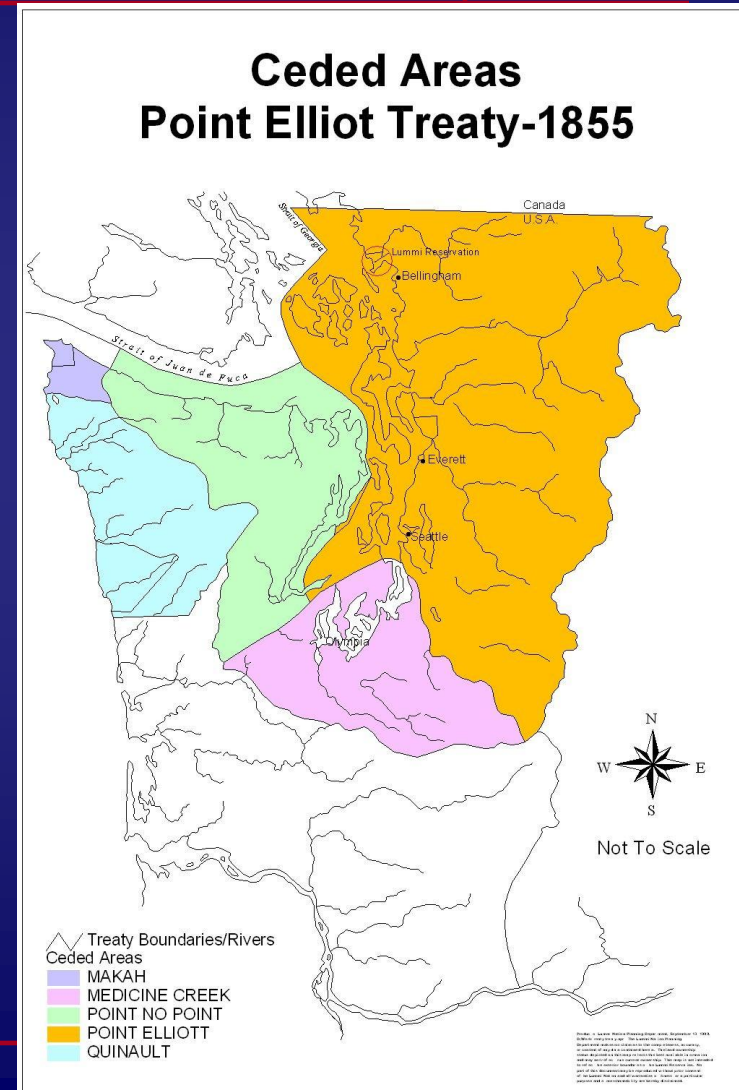
Isaac Stevens – Treaty Negotiations and the Western Washington Treaties

- Five “Stevens Treaties” relevant to oil spill response in Western Washington 1854-1855
- Point Elliot (Lummi et al.), Medicine Creek, Point No Point, Makah, Olympia/Quinault
- All five treaties were ratified by the United States in 1859 pursuant to Article 2 of the U.S. Constitution
- Subsequent court cases and U.S. policy have established a federal “Trust Responsibility”

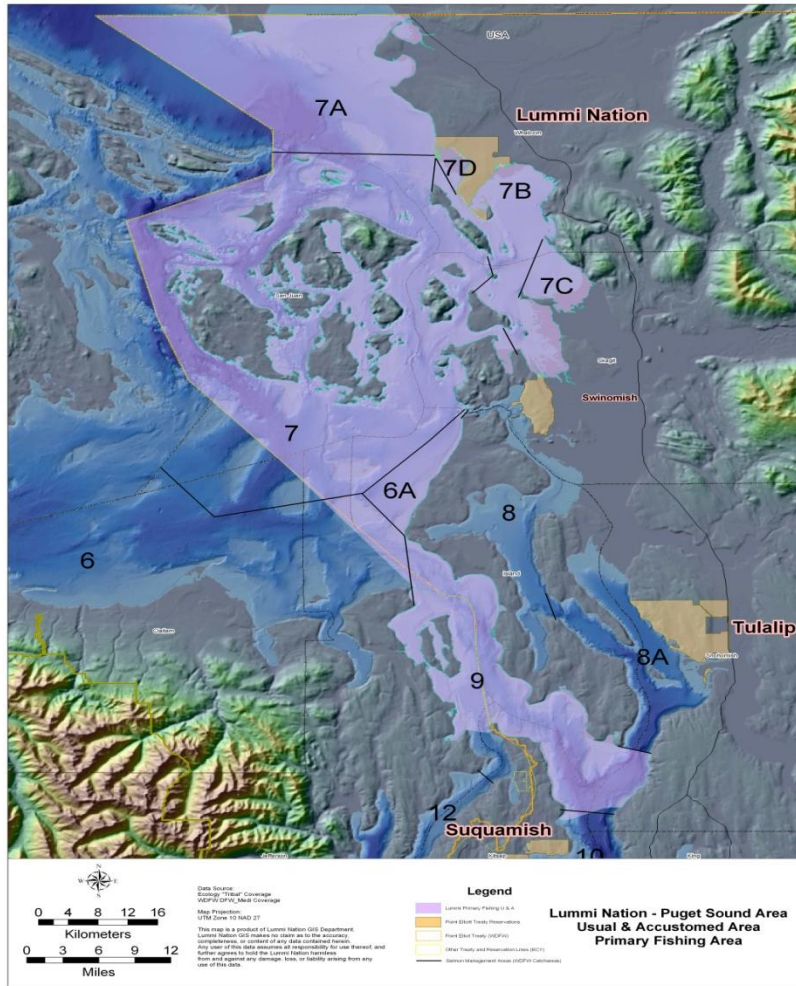
Isaac Stevens – Treaty Negotiations and the Western Washington Treaties



- Relevant Treaty Provisions – Indians ceded to the United States:
 - All of western Washington except land reservations and off-reservation fishing, hunting, and gathering rights
 - Acknowledged sovereignty of United States
 - Right to trade with British (foreign policy)



Isaac Stevens – Treaty Negotiations and the Western Washington Treaties



- Relevant Treaty Provisions – Indians kept:
 - Fishing Clause: “The right of taking fish at all usual and accustomed grounds and stations is hereby reserved to the said Indians, ...”
 - Land Reservation Clause: Setting aside particular tracts of land for the “exclusive use and occupation of the Indians”

Post Treaty Activities 1855-1960s



- *United States v. Winans* – U.S. Supreme Court (1905)
 - Treaties a “grant from the Indians, not grant to the Indians” (“Reserved Rights Doctrine”)
 - Fishing “not much more necessary than air they breathe”
 - Access to fishing grounds part of fishing right – even if fishing areas away from Reservation

Post Treaty Activities 1855-1960s



- Perfection of Canning Techniques
- Conflict with Indian Fishing
- Continuing decline in Indian catch with development of non-Indian fishing
- Demonization of tribal net fishing
- Late 1960s fish-ins and arrests
- Puyallup Railroad Bridge burned

United States v. Washington ("Boldt Decision")



- In September 1970 the U.S. filed lawsuit and several tribal governments intervened
- Longest trial to date in western Washington
- Final Decision No. 1 issued on February 12, 1973
- U.S. Supreme Court affirmed Final Decision No. 1 in all significant respects in 1979

United States v. Washington ("Boldt Decision")



- Major holdings relevant to oil spill response:
 - Treaties binding on Washington State and U.S.
 - Treaty right extends to all tribal usual and accustomed (U&A) fishing grounds and stations
 - Tribes entitled to 50% of harvestable salmon
 - State cannot regulate tribal fishing except for conservation of the species
 - State must regulate own fishing to assure tribal opportunity to catch 50%
 - Tribes can regulate own fishing after meeting certain criteria

United States v. Washington ("Boldt Decision")

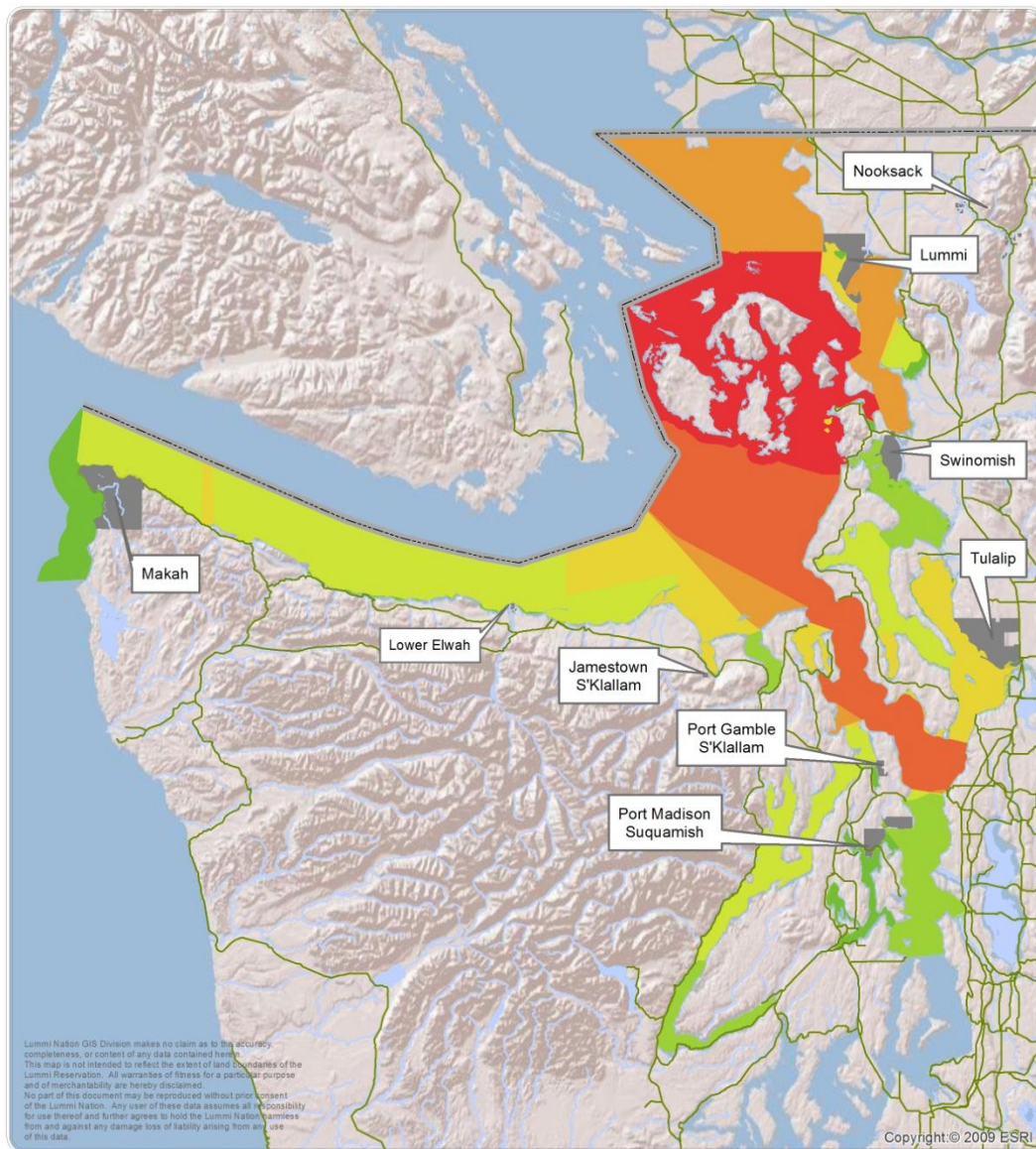


- Other Relevant Major holdings:
 - Court retains jurisdiction to resolve other issues
 - Tribal U&A delineated
 - Tribal U&A can and do overlap
- In 1989, tribal governments and the United States sued Washington State and private landowners to enforce shellfish harvest rights
 - Decisions in 1994 and 1995 confirmed Treaty right to all species of shellfish, whether harvested in 1854 or not.
- Co-Management of Fishery Resources

United States v. Washington ("Boldt Decision")

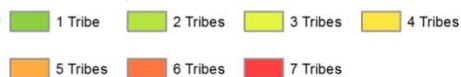


- One or more tribes have U&A in all salt water from 40 miles west of the Washington coast to throughout the Salish Sea.
- Several tribes have U&A shared with Lummi in waters around the BP Cherry Point Refinery and the San Juan Islands:
 - Swinomish
 - Suquamish
 - Tulalip
 - Three Klallam Tribes
 - Nooksack



Overlapping Usual and Accustomed (U&A) Grounds for Nine Northern Puget Sound Tribes

U & A Overlap



U.S.A.-Canadian Border
Indian Reservations

0 10 20
Miles





Tribal Interests Related to Oil Spill Response – Lummi Nation Example



Lummi is a Fishing Tribe

Largest Northwestern
Tribal Fishing Fleet



Commercial, Ceremonial
and Subsistence Harvest





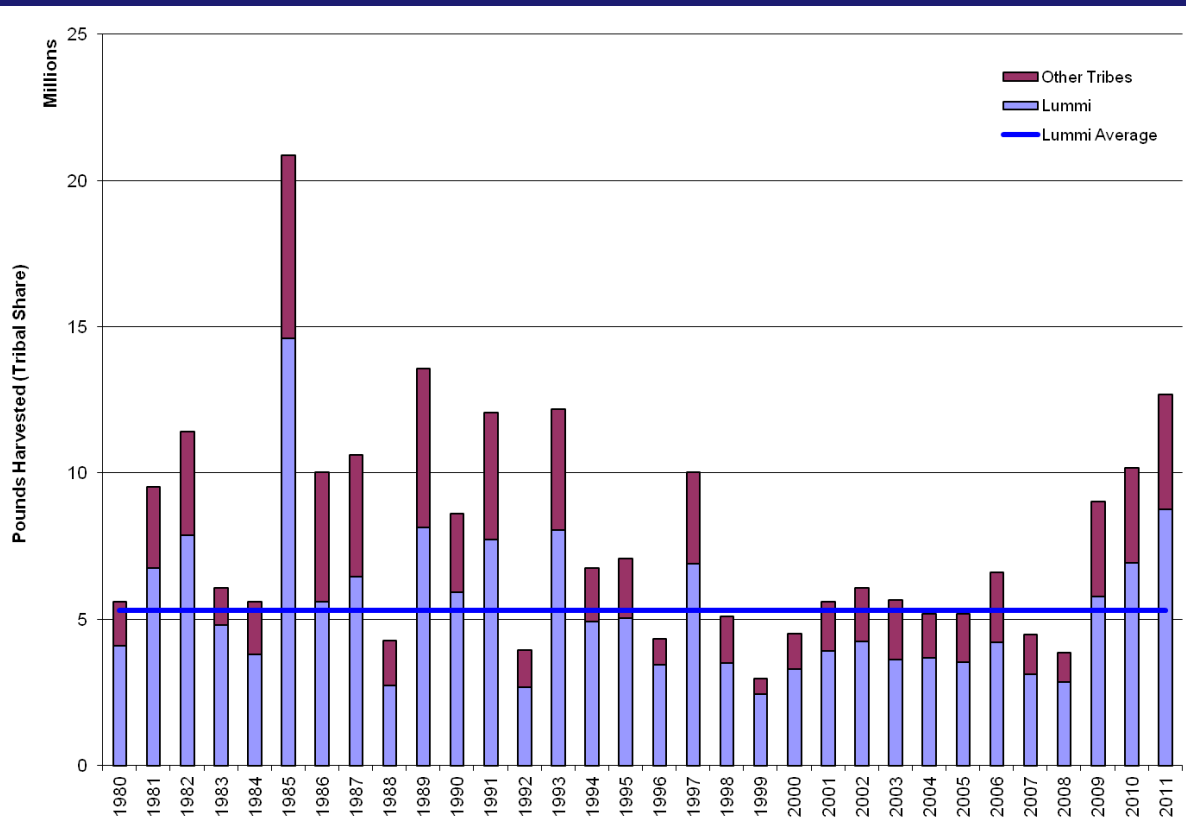
Lummi is a Fishing Tribe



Requires abundant, high quality water
and tidelands free from contaminants



Lummi is a Fishing Tribe



- Over the 1980 through 2011 period, Lummi harvested an average of 69% of the tribal catch of all finfish and shellfish.
- The average annual Lummi harvest is about 5.3 million pounds of seafood
- Lummi harvested over 14.6 million pounds of seafood during 1985



The Lummi People



- There are approx. 4,650 enrolled Lummi tribal members.
- Approximately 2,650 tribal members live on Reservation – the remainder live in the region or elsewhere.



Staff Responsibilities, Response Capabilities, and Expected Roles within Response – Lummi Example



Staff Responsibilities

- Under the Lummi Constitution, the elected Council members have complete authority and responsibility including ensuring the health and safety of the community during emergencies.
- Administrative authority and responsibility for emergency response split between the Police Department and Natural Resources Department.
 - Police protect life, property, and rights of community
 - Natural Resources Department protects natural resources and ability to exercise treaty rights

Staff Responsibilities and Capabilities



- The Lummi Cultural Resources Department and the Lummi Planning Department also have roles during emergency response.
- Lummi has trained over 50 people in various aspects of oil and hazardous material spill response starting in 1997.
- Training levels range from the 4-hour ICS training to 40-hour HAZOWPER.
- Approximately 30 of those individuals who have received training or participated in spill drills still work for Lummi in some capacity.

Expected Roles Within Response



- For a small spill on-Reservation, Lummi staff have responded by containing spilled material (when appropriate), using sorbents to remove spilled material, and disposing of collected material.
- For larger spills, Lummi staff members report to the Incident Command location and actively engage at a minimum in the Unified Command as the Tribal On-Scene Coordinator (TOSC).
- Lummi staff members (natural and cultural resources in particular) would likely also participate in the Operations and Planning Section.

Expected Roles Within Response



- The Lummi role within the Unified Command is focused on ensuring:
 - Safety of Lummi tribal members and response personnel
 - A coordinated and effective response effort
 - Protection of environmentally and culturally sensitive areas
 - Containment and recovery of spilled material
 - Keeping the Lummi community informed of the spill situation and response activities
 - Minimizing economic impacts of the spill.



Summary and Conclusion



Summary and Conclusions

- Tribal governments and members have a Treaty right to harvest finfish and shellfish.
- A major oil spill could potentially destroy the environment and associated natural resources that Native Americans have relied on since time immemorial for commercial, ceremonial, and subsistence purposes.
- Tribal governments work to minimize the risk of a spill and to help ensure a safe and effective response in the event of a spill.
- U.S. must protect Tribal rights and interests.



Questions?



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